

Union Calendar No.

108TH CONGRESS
1ST SESSION

H. R. 1115

[Report No. 108-]

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. SMITH of Texas, Mr. STENHOLM, Mr. DELAY, Mr. DOOLEY of California, Mr. HYDE, Mr. HOLDEN, Mr. COX, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE , 2003

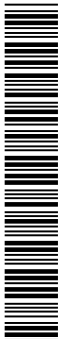
Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 6, 2003]

A BILL

To amend the procedures that apply to consideration of



interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-**
 4 **TENTS.**

5 (a) *SHORT TITLE.*—*This Act may be cited as the*
 6 *“Class Action Fairness Act of 2003”.*

7 (b) *REFERENCE.*—*Whenever in this Act reference is*
 8 *made to an amendment to, or repeal of, a section or other*
 9 *provision, the reference shall be considered to be made to*
 10 *a section or other provision of title 28, United States Code.*

11 (c) *TABLE OF CONTENTS.*—*The table of contents for*
 12 *this Act is as follows:*

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction of interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Appeals of class action certification orders.

Sec. 7. Enactment of Judicial Conference recommendations.

Sec. 8. Effective date.



1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.—The Congress finds as follows:*

3 (1) *Class action lawsuits are an important and*
4 *valuable part of our legal system when they permit*
5 *the fair and efficient resolution of legitimate claims*
6 *of numerous parties by allowing the claims to be ag-*
7 *gregated into a single action against a defendant that*
8 *has allegedly caused harm.*

9 (2) *Over the past decade, there have been abuses*
10 *of the class action device that have—*

11 (A) *harmed class members with legitimate*
12 *claims and defendants that have acted respon-*
13 *sibly;*

14 (B) *adversely affected interstate commerce;*
15 *and*

16 (C) *undermined public respect for the judi-*
17 *cial system in the United States.*

18 (3) *Class members have been harmed by a num-*
19 *ber of actions taken by plaintiffs' lawyers, which pro-*
20 *vide little or no benefit to class members as a whole,*
21 *including—*

22 (A) *plaintiffs' lawyers receiving large fees,*
23 *while class members are left with coupons or*
24 *other awards of little or no value;*



1 (B) unjustified rewards being made to cer-
2 tain plaintiffs at the expense of other class mem-
3 bers; and

4 (C) the publication of confusing notices that
5 prevent class members from being able to fully
6 understand and effectively exercise their rights.

7 (4) Through the use of artful pleading, plaintiffs
8 are able to avoid litigating class actions in Federal
9 court, forcing businesses and other organizations to
10 defend interstate class action lawsuits in county and
11 State courts where—

12 (A) the lawyers, rather than the claimants,
13 are likely to receive the maximum benefit;

14 (B) less scrutiny may be given to the merits
15 of the case; and

16 (C) defendants are effectively forced into set-
17 tlements, in order to avoid the possibility of huge
18 judgments that could destabilize their companies.

19 (5) These abuses undermine the Federal judicial
20 system, the free flow of interstate commerce, and the
21 intent of the framers of the Constitution in creating
22 diversity jurisdiction, in that county and State courts
23 are—

24 (A) handling interstate class actions that
25 affect parties from many States;



1 (B) sometimes acting in ways that dem-
2 onstrate bias against out-of-State defendants;
3 and

4 (C) making judgments that impose their
5 view of the law on other States and bind the
6 rights of the residents of those States.

7 (6) Abusive interstate class actions have harmed
8 society as a whole by forcing innocent parties to settle
9 cases rather than risk a huge judgment by a local
10 jury, thereby costing consumers billions of dollars in
11 increased costs to pay for forced settlements and exces-
12 sive judgments.

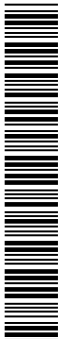
13 (b) *PURPOSES.*—The purposes of this Act are—

14 (1) to assure fair and prompt recoveries for class
15 members with legitimate claims;

16 (2) to protect responsible companies and other
17 institutions against interstate class actions in State
18 courts;

19 (3) to restore the intent of the framers of the
20 Constitution by providing for Federal court consider-
21 ation of interstate class actions; and

22 (4) to benefit society by encouraging innovation
23 and lowering consumer prices.



1 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**
2 **PROVED PROCEDURES FOR INTERSTATE**
3 **CLASS ACTIONS.**

4 (a) *IN GENERAL.*—Part V is amended by inserting
5 after chapter 113 the following:

6 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Judicial scrutiny of coupon and other noncash settlements.

“1712. Protection against loss by class members.

“1713. Protection against discrimination based on geographic location.

“1714. Prohibition on the payment of bounties.

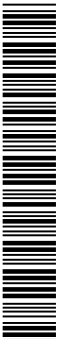
“1715. Definitions.

7 **“§ 1711. Judicial scrutiny of coupon and other**
8 **noncash settlements**

9 “The court may approve a proposed settlement under
10 which the class members would receive noncash benefits or
11 would otherwise be required to expend funds in order to
12 obtain part or all of the proposed benefits only after a hear-
13 ing to determine whether, and making a written finding
14 that, the settlement is fair, reasonable, and adequate for
15 class members.

16 **“§ 1712. Protection against loss by class members**

17 “The court may approve a proposed settlement under
18 which any class member is obligated to pay sums to class
19 counsel that would result in a net loss to the class member
20 only if the court makes a written finding that nonmonetary
21 benefits to the class member outweigh the monetary loss.



1 **“§ 1713. Protection against discrimination based on**
2 **geographic location**

3 *“The court may not approve a proposed settlement*
4 *that provides for the payment of greater sums to some class*
5 *members than to others solely on the basis that the class*
6 *members to whom the greater sums are to be paid are lo-*
7 *cated in closer geographic proximity to the court.*

8 **“§ 1714. Prohibition on the payment of bounties**

9 *“(a) IN GENERAL.—The court may not approve a pro-*
10 *posed settlement that provides for the payment of a greater*
11 *share of the award to a class representative serving on be-*
12 *half of a class, on the basis of the formula for distribution*
13 *to all other class members, than that awarded to the other*
14 *class members.*

15 *“(b) RULE OF CONSTRUCTION.—The limitation in*
16 *subsection (a) shall not be construed to prohibit any pay-*
17 *ment approved by the court for reasonable time or costs that*
18 *a person was required to expend in fulfilling his or her obli-*
19 *gations as a class representative.*

20 **“§ 1715. Definitions**

21 *“In this chapter—*

22 *“(1) CLASS ACTION.—The term ‘class action’*
23 *means any civil action filed in a district court of the*
24 *United States pursuant to rule 23 of the Federal*
25 *Rules of Civil Procedure or any civil action that is*
26 *removed to a district court of the United States that*



1 *was originally filed pursuant to a State statute or*
 2 *rule of judicial procedure authorizing an action to be*
 3 *brought by one or more representatives on behalf of a*
 4 *class.*

5 “(2) *CLASS COUNSEL.*—*The term ‘class counsel’*
 6 *means the persons who serve as the attorneys for the*
 7 *class members in a proposed or certified class action.*

8 “(3) *CLASS MEMBERS.*—*The term ‘class mem-*
 9 *bers’ means the persons who fall within the definition*
 10 *of the proposed or certified class in a class action.*

11 “(4) *PLAINTIFF CLASS ACTION.*—*The term*
 12 *‘plaintiff class action’ means a class action in which*
 13 *class members are plaintiffs.*

14 “(5) *PROPOSED SETTLEMENT.*—*The term ‘pro-*
 15 *posed settlement’ means an agreement that resolves*
 16 *claims in a class action, that is subject to court ap-*
 17 *proval, and that, if approved, would be binding on*
 18 *the class members.’.*

19 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 20 *table of chapters for part V is amended by inserting after*
 21 *the item relating to chapter 113 the following:*

“114. Class Actions 1711”.

22 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF**
 23 **INTERSTATE CLASS ACTIONS.**

24 (a) *APPLICATION OF FEDERAL DIVERSITY JURISDIC-*
 25 *TION.*—*Section 1332 is amended—*



1 (1) *by redesignating subsection (d) as subsection*
2 *(e); and*

3 (2) *by inserting after subsection (c) the fol-*
4 *lowing:*

5 “(d)(1) *In this subsection—*

6 “(A) *the term ‘class’ means all of the class mem-*
7 *bers in a class action;*

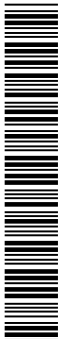
8 “(B) *the term ‘class action’ means any civil ac-*
9 *tion filed pursuant to rule 23 of the Federal Rules of*
10 *Civil Procedure or similar State statute or rule of ju-*
11 *dicial procedure authorizing an action to be brought*
12 *by one or more representative persons on behalf of a*
13 *class;*

14 “(C) *the term ‘class certification order’ means an*
15 *order issued by a court approving the treatment of a*
16 *civil action as a class action; and*

17 “(D) *the term ‘class members’ means the persons*
18 *who fall within the definition of the proposed or cer-*
19 *tified class in a class action.*

20 “(2) *The district courts shall have original jurisdiction*
21 *of any civil action in which the matter in controversy ex-*
22 *ceeds the sum or value of \$2,000,000, exclusive of interest*
23 *and costs, and is a class action in which—*

24 “(A) *any member of a class of plaintiffs is a cit-*
25 *izen of a State different from any defendant;*



1 “(B) any member of a class of plaintiffs is a for-
2 eign state or a citizen or subject of a foreign state and
3 any defendant is a citizen of a State; or

4 “(C) any member of a class of plaintiffs is a cit-
5 izen of a State and any defendant is a foreign state
6 or a citizen or subject of a foreign state.

7 “(3) Paragraph (2) shall not apply to any civil action
8 in which—

9 “(A)(i) the substantial majority of the members
10 of the proposed plaintiff class and the primary de-
11 fendants are citizens of the State in which the action
12 was originally filed; and

13 “(ii) the claims asserted therein will be governed
14 primarily by the laws of the State in which the action
15 was originally filed;

16 “(B) the primary defendants are States, State
17 officials, or other governmental entities against whom
18 the district court may be foreclosed from ordering re-
19 lief; or

20 “(C) the number of proposed plaintiff class mem-
21 bers is less than 100.

22 “(4) In any class action, the claims of the individual
23 class members shall be aggregated to determine whether the
24 matter in controversy exceeds the sum or value of
25 \$2,000,000, exclusive of interest and costs.

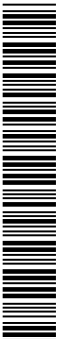


1 “(5) *This subsection shall apply to any class action*
2 *before or after the entry of a class certification order by*
3 *the court with respect to that action.*

4 “(6)(A) *A district court shall dismiss any civil action*
5 *that is subject to the jurisdiction of the court solely under*
6 *this subsection if the court determines the action may not*
7 *proceed as a class action based on a failure to satisfy the*
8 *requirements of rule 23 of the Federal Rules of Civil Proce-*
9 *dure.*

10 “(B) *Nothing in subparagraph (A) shall prohibit*
11 *plaintiffs from filing an amended class action in Federal*
12 *court or filing an action in State court, except that any*
13 *such action filed in State court may be removed to the ap-*
14 *propriate district court if it is an action of which the dis-*
15 *trict courts of the United States have original jurisdiction.*

16 “(C) *In any action that is dismissed under this para-*
17 *graph and is filed by any of the original named plaintiffs*
18 *therein in the same State court venue in which the dis-*
19 *missed action was originally filed, the limitations periods*
20 *on all reasserted claims shall be deemed tolled for the period*
21 *during which the dismissed class action was pending. The*
22 *limitations periods on any claims that were asserted in a*
23 *class action dismissed under this paragraph that are subse-*
24 *quently asserted in an individual action shall be deemed*



1 *tolled for the period during which the dismissed action was*
2 *pending.*

3 “(7) Paragraph (2) shall not apply to any class action
4 brought by shareholders that solely involves a claim that
5 relates to—

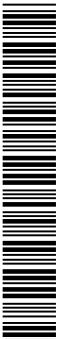
6 “(A) a claim concerning a covered security as
7 defined under section 16(f)(3) of the Securities Act of
8 1933 and section 28(f)(5)(E) of the Securities Ex-
9 change Act of 1934;

10 “(B) the internal affairs or governance of a cor-
11 poration or other form of business enterprise and
12 arises under or by virtue of the laws of the State in
13 which such corporation or business enterprise is in-
14 corporated or organized; or

15 “(C) the rights, duties (including fiduciary du-
16 ties), and obligations relating to or created by or pur-
17 suant to any security (as defined under section
18 2(a)(1) of the Securities Act of 1933 and the regula-
19 tions issued thereunder).

20 “(8) For purposes of this subsection and section 1453
21 of this title, an unincorporated association shall be deemed
22 to be a citizen of the State where it has its principal place
23 of business and the State under whose laws it is organized.

24 “(9) For purposes of this section and section 1453 of
25 this title, a civil action that is not otherwise a class action



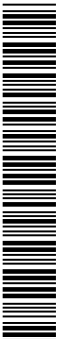
1 *as defined in paragraph (1)(B) of this subsection shall nev-*
2 *ertheless be deemed a class action if—*

3 “(A) *the named plaintiff purports to act for the*
4 *interests of its members (who are not named parties*
5 *to the action) or for the interests of the general public,*
6 *seeks a remedy of damages, restitution, disgorgement,*
7 *or any other form of monetary relief, and is not a*
8 *State attorney general; or*

9 “(B) *monetary relief claims in the action are*
10 *proposed to be tried jointly in any respect with the*
11 *claims of 100 or more other persons on the ground*
12 *that the claims involve common questions of law or*
13 *fact.*

14 *In any such case, the persons who allegedly were injured*
15 *shall be treated as members of a proposed plaintiff class*
16 *and the monetary relief that is sought shall be treated as*
17 *the claims of individual class members. The provisions of*
18 *paragraphs (3) and (6) of this subsection and subsections*
19 *(b)(2) and (d) of section 1453 shall not apply to civil ac-*
20 *tions described under subparagraph (A). The provisions of*
21 *paragraph (6) of this subsection, and subsections (b)(2) and*
22 *(d) of section 1453 shall not apply to civil actions described*
23 *under subparagraph (B).”.*

24 (b) *CONFORMING AMENDMENTS.—*



1 (1) *Section 1335(a)(1) is amended by inserting*
2 “(a) or (d)” after “1332”.

3 (2) *Section 1603(b)(3) is amended by striking*
4 “(d)” and inserting “(e)”.

5 **SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FED-**
6 **ERAL DISTRICT COURT.**

7 (a) *IN GENERAL.*—Chapter 89 is amended by adding
8 after section 1452 the following:

9 **“§ 1453. Removal of class actions**

10 “(a) *DEFINITIONS.*—In this section, the terms ‘class’,
11 ‘class action’, ‘class certification order’, and ‘class member’
12 have the meanings given these terms in section 1332(d)(1).

13 “(b) *IN GENERAL.*—A class action may be removed to
14 a district court of the United States in accordance with this
15 chapter, without regard to whether any defendant is a cit-
16 izen of the State in which the action is brought, except that
17 such action may be removed—

18 “(1) by any defendant without the consent of all
19 defendants; or

20 “(2) by any plaintiff class member who is not a
21 named or representative class member without the
22 consent of all members of such class.

23 “(c) *WHEN REMOVABLE.*—This section shall apply to
24 any class action before or after the entry of a class certifi-
25 cation order in the action, except that a plaintiff class mem-



1 *ber who is not a named or representative class member of*
2 *the action may not seek removal of the action before an*
3 *order certifying a class of which the plaintiff is a class*
4 *member has been entered.*

5 “(d) *PROCEDURE FOR REMOVAL.*—*The provisions of*
6 *section 1446 relating to a defendant removing a case shall*
7 *apply to a plaintiff removing a case under this section, ex-*
8 *cept that in the application of subsection (b) of such section*
9 *the requirement relating to the 30-day filing period shall*
10 *be met if a plaintiff class member files notice of removal*
11 *within 30 days after receipt by such class member, through*
12 *service or otherwise, of the initial written notice of the class*
13 *action.*

14 “(e) *REVIEW OF ORDERS REMANDING CLASS ACTIONS*
15 *TO STATE COURTS.*—*The provisions of section 1447 shall*
16 *apply to any removal of a case under this section, except*
17 *that, notwithstanding the provisions of section 1447(d), an*
18 *order remanding a class action to the State court from*
19 *which it was removed shall be reviewable by appeal or oth-*
20 *erwise.*

21 “(f) *EXCEPTION.*—*This section shall not apply to any*
22 *class action brought by shareholders that solely involves—*

23 “(1) *a claim concerning a covered security as de-*
24 *finied under section 16(f)(3) of the Securities Act of*



1 1933 and section 28(f)(5)(E) of the Securities Ex-
2 change Act of 1934;

3 “(2) a claim that relates to the internal affairs
4 or governance of a corporation or other form of busi-
5 ness enterprise and arises under or by virtue of the
6 laws of the State in which such corporation or busi-
7 ness enterprise is incorporated or organized; or

8 “(3) a claim that relates to the rights, duties (in-
9 cluding fiduciary duties), and obligations relating to
10 or created by or pursuant to any security (as defined
11 under section 2(a)(1) of the Securities Act of 1933
12 and the regulations issued thereunder).”.

13 (b) *REMOVAL LIMITATION.*—Section 1446(b) is
14 amended in the second sentence by inserting “(a)” after
15 “section 1332”.

16 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—The
17 table of sections for chapter 89 is amended by adding after
18 the item relating to section 1452 the following:

 “1453. Removal of class actions.”.

19 **SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION OR-**
20 **DERs.**

21 (a) *IN GENERAL.*—Section 1292(a) is amended by in-
22 serting after paragraph (3) the following:

23 “(4) Orders of the district courts of the United
24 States granting or denying class certification under
25 rule 23 of the Federal Rules of Civil Procedure, if no-



1 *tice of appeal is filed within 10 days after entry of*
2 *the order.”.*

3 (b) *DISCOVERY STAY.*—*All discovery and other pro-*
4 *ceedings shall be stayed during the pendency of any appeal*
5 *taken pursuant to the amendment made by subsection (a),*
6 *unless the court finds upon the motion of any party that*
7 *specific discovery is necessary to preserve evidence or to pre-*
8 *vent undue prejudice to that party.*

9 **SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE REC-**
10 **COMMENDATIONS.**

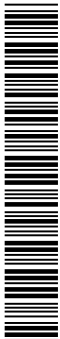
11 *Notwithstanding any other provision of law, the*
12 *amendments to Rule 23 of the Federal Rules of Civil Proce-*
13 *dure which are embraced by the order entered by the Su-*
14 *preme Court of the United States on March 27, 2003, shall*
15 *take effect on the date of the enactment of this Act or on*
16 *December 1, 2003 (as specified in that order), whichever*
17 *occurs first.*

18 **SEC. 8. EFFECTIVE DATE.**

19 (a) *IN GENERAL.*—*The amendments made by this Act*
20 *shall apply to—*

21 (1) *any civil action commenced on or after the*
22 *date of the enactment of this Act; and*

23 (2) *any civil action commenced before such date*
24 *of enactment in which a class certification order (as*
25 *defined in section 1332(d)(1)(C) of title 28, United*



1 *States Code, as amended by section 4 of this Act) is*
2 *entered on or after such date of enactment.*

3 ***(b) FILING OF NOTICE OF REMOVAL.***—*In the case of*
4 *any civil action to which subsection (a)(2) applies, the re-*
5 *quirement relating to the 30-day period for the filing of a*
6 *notice of removal under section 1446(b) and section 1453(d)*
7 *of title 28, United States Code, shall be met if the notice*
8 *of removal is filed within 30 days after the date on which*
9 *the class certification order referred to in subsection (a)(2)*
10 *is entered.*

